

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

**APPELLANTS' REPLY BRIEF ON APPEAL
37 C.F.R. §41.41**

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APPLICANT: Stefan ASCHOFF, et al. DOCKET NO: P03,0378
SERIAL NO.: 10/669,075 ART UNIT: 2182
FILED: September 23, 2004 EXAMINER: Park, Ilwoo
CONF. NO.: 2710
TITLE: INTERFACE DEVICE FOR AUDIOLOGICAL DEVICES AND
CORRESPONDING METHOD TO EXCHANGE DATA

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Sir:

15 In accordance with the provisions of 37 C.F.R. §41.41, Appellants submit
this Reply Brief in response to the Examiner's Answer mailed February 13, 2007.
This Brief does not introduce any new amendment or evidence.

In the Examiner's Answer, the Examiner has attacked a substantially
weakened restatement of Appellants' position with respect to Eaton, in essence
20 asserting that the mere presence of a disclosure of a plurality of applications by
Eaton is sufficient to teach all of the limitations of the independent claims.

The Examiner states, on p. 7 of the Examiner's Answer, that Eaton
teaches a plurality of audiological applications, specifically to a test and
measuring application as well as a programming application. The Examiner cites
25 to Eaton's paragraphs 0010, 0045, and 0053 as disclosing the former, and
paragraphs 0010, 0045, and 0059 as disclosing the latter. The only paragraph in
common between these paragraph groupings is paragraph 0010.

However, paragraph 0010 only discloses an embodiment to a single

application (tailoring an audiological therapy), stating:

Another illustrative embodiment includes a method for tailoring an audiological therapy for a patient.

This paragraph discloses only one embodiment, and only one application.

5 The Examiner then subsequently suggests that Eaton teaches the claimed converting for the plurality of audiological applications (test and measuring application, and programming application), in paragraph 0053, based on the datastructure of the aural response in paragraphs 0048, 0049, and Figure 3.

Paragraph 0048 does discuss the storage of the aural response in a data
10 structure, and does note that any type of data structure can be used, but the identified possibilities relates to the structure of the stored date itself at a much lower level than the application level (i.e., an array or linked list)—there is no conversion for a plurality of audiological applications disclosed in this paragraph.

Paragraph 0049 indicates a single embodiment of the structure: an
15 audiological therapy application for the patient. Again, one embodiment and one application.

Finally, paragraph 0053, which the Appellants presume is intended by the Examiner as the glue for showing the conversion of the data for a plurality of applications, again cites applications in separate embodiments. It states:

20 In one embodiment, such aural responses are sent to a programming fitting server 616 through the cellular/mobile network 610 and the Internet 614; in another embodiment, such aural response are formatted to form an audiogram before sending the
25 information to the program fitting server 616. But this paragraph lack and discussion related to a “conversion” for a plurality of audiological applications.

With regard to the concluding portions of the Examiner’s argument in addressing the disclosure of paragraphs 0068 and 0069, first, each of the
30 different protocols is discussed in the alternative. Paragraph 0068 discusses the types of data service protocols that could be used in list form, but the “or” at the end of the list suggests that these are listed in the alternative. Similarly, the different communication protocols listed in Paragraph 0069 are further discussed

in the alternative... thus, there is no “conversion” related to a plurality of protocols.

However, even if *arguendo* these sections did disclose a special formatting that took place to handle the different communication protocols, the communication protocols cannot be read so broadly as to encompass the language requiring conversion for the plurality of audiological applications—the conversion of data at an application level would occur at a much higher level than the communications protocol and be completely independent of the communication mechanisms used.

CONCLUSION

For the above additional reasons provided in this Reply Brief, in addition to those provided in the Appeal Brief, Appellants respectfully submit that the Examiner is in error in law and in fact in rejecting claims 1-16 based on the teachings of the above-discussed reference. Reversal of the rejection of all of those claims is justified, and the same is respectfully requested.

No additional fee is believed due for this Reply Brief. If necessary, the Commissioner is hereby authorized to charge any additional fees which may be required to account No. 501519.

Respectfully submitted,

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